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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,011	01/29/2001	Nan Feng	JP919990263-US1	9243
7590	07/14/2006		EXAMINER	
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			ART UNIT	PAPER NUMBER
			2145	

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



***Detailed Office Action***

This office action is in response to the correspondence received on April 24, 2006.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kenner (US Pat No: 6,112,239).

1. With regards to claims 1, 11 and 20, Kenner teaches, a method (a method is able to be an apparatus and a program) for balancing load among a plurality of mirror servers, wherein a user may select and get access to any one of said plurality of mirror servers within an identical web page (Kenner teaches distributing load amongst distributed mirror servers (column 5, lines 5-19, Kenner)), said method comprising the steps of:
  - a. When said web page is access by a client, transmitting not only said web page but also a predetermined script to said client (Client-side software is used to determine which server to connect to (column 5, line 60 – column 6, line 3, Kenner), the software can be downloaded into the client (column 8, lines 27-32, Kenner));

- b. Automatically executing said script at said client so as to respectively create connections with each of said plurality of mirror servers and measure respective response times (The software can be run automatically (column 8, lines 37-41, Kenner));
  - c. Selecting a mirror server having the shortest response time for the user to access (The software runs tests and determines how each mirror site ranks for the client the software is installed in. The appropriate mirror site can then be used to reduce response time (column 5, line 43 – column 6, line 3, Kenner)).
- 2. With regards to claims 2 and 12, Kenner teaches, the method (a method is able to be an apparatus) wherein said predetermined script is transmitted together with said web page to said client (Client-side software is used to determine which server to connect to (column 5, line 60 – column 6, line 3, Kenner), the software can be downloaded into the client (column 8, lines 27-32, Kenner). The server providing the software can also provide other data (column 8, lines 13-19, Kenner));
- 3. With regards to claim 3, Kenner teaches, the method wherein said automatically executing script comprises the steps of:
  - a. Calling a predetermined engine by said client (The software consists of a configuration utility (column 5, lines 39-40, Kenner)); and

- b. Executing said script by said engine, comprising creating connections with each of said plurality of mirror servers and measuring respective response times (Tests are performed (column 5, lines 43-60, Kenner)).
- 4. With regards to claims 4 and 13, Kenner teaches, the method (a method is able to be an apparatus) wherein said executing said script is performed in a multi-thread manner for said plurality of mirror servers (Modern processors and operating systems enable multithreaded execution)
- 5. With regards to claims 5 and 14, Kenner teaches, the method (a method is able to be an apparatus) further comprising sending the client information to the mirror servers being connected (It is inherent that web browsers send IP information to servers and column 18, lines 20-21, Kenner).
- 6. With regards to claims 6 and 15, Kenner teaches, the method (a method is able to be an apparatus) wherein said client information includes at least one of IP address, domain name, platform name, platform version, and browser type of said client (It is inherent that web browsers send IP information to servers and column 18, lines 20-21, Kenner).

7. With regards to claims 7 and 16, Kenner teaches, the method (a method is able to be an apparatus) wherein said connections are created through proxies (Figure 1, elements 14 and 18, Kenner).
8. With regards to claims 8 and 17, Kenner teaches, the method (a method is able to be an apparatus) wherein said script can be re-started by said user (User is allowed to re-rerun the utility (column 14, lines 18-19, Kenner)).
9. With regards to claims 9 and 18, Kenner teaches, the method (a method is able to be an apparatus) further comprising comparing respective response times of said plurality of mirror servers (Kenner's design allows for a variety of tests (column 10, line 5 – column 11, line 65, Kenner)).
10. With regards to claims 10 and 19, Kenner teaches, the method (a method is able to be an apparatus) further comprising the steps of:
  - a. Notifying said user of the mirror server having the shortest response time (column 5, lines 52-60, Kenner);
  - b. Receiving user input selecting one of said mirror servers as the selected mirror server (column 9, lines 58-63, Kenner); and
  - c. Establishing access for the user to the mirror server (column 6, lines 4-50, Kenner).

***Response to Remarks***

The amendment received on April 24, 2006 has been carefully examined but is not deemed fully persuasive. The amendment features only amendments to independent claim 11, which aligns it more closely with the other independent claims. The claim amendment is not deemed to overcome the prior art issued. The amendment also features two main arguments presented by the applicants. The following are the examiner's response to those two arguments.

The first point of contention addressed by the applicants is that the applicants believe that Kenner (prior art) does not teach or suggest that the determination is made in response to the client accessing the web page. The applicants argue that their design does provide such a feature. However, the examiner points out that that is not what is claimed. The claim language states that a web page is accessed to download a script. The script/file is then executed and measurements are attained. Based on the measurements, the appropriate mirror server is selected. The Kenner prior art does precisely that as indicated within column 5, line 36 – column 6, line 16.

The second point of contention involves Kenner's teaching of "on-the-fly." Applicant suggests that "on-the-fly" does not teach the traits of "dynamic transmitting and executing of script for measuring response time and selecting a server in response to the client/user accessing the web page." Again the examiner reminds the applicant that the claim language states that a web page is accessed to download a script. The script/file is then executed and measurements are attained. Based on the measurements, the appropriate mirror server is selected. Within columns 5 and 6,

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Kenner teaches how the script/file is downloaded when the user accesses a web site. Hence, the downloading is done when the user makes a move and afterwards, the execution of the script/file occurs. Hence the transmission and execution are dynamic. Based on the information attained from the execution of the script/file, the server selection is made. In addition, Kenner's teaching of "on-the-fly" (column 6, lines 30-44, Kenner) demonstrates that server selection occurs "on-the-fly."

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Ballard (US Pat No: 6,078,960).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azizul Choudhury whose telephone number is (571) 272-3909. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AC

  
**JASON CARDONE**  
**SUPERVISORY PATENT EXAMINER**